

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** (“Agreement”) is made and entered into by and between the **CITY OF BURLESON** (the “City”), a home rule municipal corporation situated in portions of Tarrant and Johnson Counties, Texas and BIRKHOFF, HENDRICKS & CARTER, L.L.P. (“Consultant”).

1 SCOPE OF SERVICES.

Consultant hereby agrees to provide the City with professional services for the purpose of the services outlined in **Exhibits A, B, and C**. Attached hereto and incorporated for all purposes incident to this Agreement is **Exhibit A** more specifically describing the services to be provided hereunder.

2 TERM.

This Agreement shall commence upon execution by the parties (the “Effective Date”) and terminate upon completion of the work specified in the scope of services unless terminated earlier in accordance with the provisions of this Agreement. Those obligations concerning warranties and representations which by their nature should survive termination of this Agreement, shall survive termination of this Agreement, including Articles 5, 6, 8, 12, 14-17, and 25-26.

3 COMPENSATION.

This is a fixed-price contract. The City shall pay Consultant an amount not to exceed ONE HUNDRED TEN THOUSAND THREE HUNDRED AND NO/100 DOLLARS (\$110,300.00) in accordance with the fee schedule incorporated herein as **Exhibit B**, and subject to the other terms and conditions of this Agreement, in exchange for completion of all tasks and delivery of all services listed in **Exhibit A**, Scope of Work. In the event of partial performance, the City shall pay Consultant for only the itemized tasks completed and delivered. Consultant shall not perform any additional services for the City not specified by this Agreement unless the City requests and approves in writing the additional services and costs for such services. The City shall not be liable for any additional expenses of Consultant not specified by this Agreement unless the City first duly approves such expenses in a contract amendment executed by the City Manager or the City Manager’s designee.

The Consultant shall submit monthly payment invoices to the City. Invoices shall contain a detailed breakdown to include: task or deliverables to the City and date provided for the billing period, the amount billed for each task or deliverable, and the total amount due.

Payment for services rendered shall be due within thirty (30) days of the uncontested performance of the particular services so ordered and receipt by City of Consultant’s invoice for payment of same. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. No interest will accrue on any contested portion of the billing until mutually resolved. City will exercise reasonableness in contesting any billing or portion thereof.

4 TERMINATION.

4.1 Written Notice.

The City or Consultant may terminate this Agreement at any time and for any reason by providing the other party with at least thirty (30) days written notice of termination.

4.2 Non-appropriation of Funds.

In the event no funds or insufficient funds are appropriated by the City in any fiscal period for any payments due hereunder, City will notify Consultant of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the City of any kind whatsoever, except as to the portions of the payments herein agreed upon for which funds shall have been appropriated.

4.3 Duties and Obligations of the Parties.

In the event that this Agreement is terminated prior to the end of the term of this agreement as provided in Article 2, the City shall pay Consultant for services actually rendered or consultant shall reimburse the City for services paid for but not actually rendered, up to the date of notice of termination.

5 DISCLOSURE OF CONFLICTS AND CONFIDENTIAL INFORMATION.

Consultant hereby warrants to the City that Consultant has made full disclosure in writing of any existing or potential conflicts of interest related to Consultant's services under this Agreement. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Consultant hereby agrees immediately to make full disclosure to the City in writing. Consultant, for itself and its officers, agents and employees, further agrees that it shall treat all information provided to it by the City as confidential and shall not disclose any such information to a third party without the prior written approval of the City. Consultant shall store and maintain City information in a secure manner and shall not allow unauthorized users to access, modify, delete or otherwise corrupt City Information in any way. Consultant shall notify the City immediately if the security or integrity of any City information has been compromised or is believed to have been compromised.

6 RIGHT TO AUDIT.

Consultant agrees that the City shall, until the expiration of three (3) years after final payment under this contract, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and records of the consultant involving transactions relating to this Contract at no additional cost to the City. Consultant agrees that the City shall have access during normal working hours to all necessary Consultant facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this section. The City shall give Consultant reasonable advance notice of intended audits.

Consultant further agrees to include in all its subcontractor agreements hereunder a provision to the effect that the subcontractor agrees that the City shall, until expiration of three (3) years after final payment of the subcontract, have access to and the right to examine at reasonable times any directly pertinent books, documents, papers and

records of such subcontractor involving transactions related to the subcontract, and further that City shall have access during normal working hours to all subcontractor facilities and shall be provided adequate and appropriate work space in order to conduct audits in compliance with the provisions of this paragraph. City shall give subcontractor reasonable notice of intended audits.

7 **INDEPENDENT CONTRACTOR.**

It is expressly understood and agreed that Consultant shall operate as an independent contractor as to all rights and privileges granted herein, and not as agent, representative or employee of the City. Subject to and in accordance with the conditions and provisions of this Agreement, Consultant shall have the exclusive right to control the details of its operations and activities and be solely responsible for the acts and omissions of its officers, agents, servants, employees, contractors, and subcontractors. Consultant acknowledges that the doctrine of *respondeat superior* shall not apply as between the City, its officers, agents, servants and employees, and Consultant, its officers, agents, employees, servants, contractors, and subcontractors. Consultant further agrees that nothing herein shall be construed as the creation of a partnership or joint enterprise between City and Consultant.

8 **CHARACTER OF SERVICES AND INDEMNIFICATION.**

8.1 **Character of Services.**

Consultant shall perform as an independent contractor all services under this Agreement with the professional skill and care ordinarily provided by competent architects, engineers, or landscape architects practicing under the same or similar circumstances and professional license. Further, Consultant shall perform as an independent contractor all services under this Agreement as expeditiously as possible as is prudent considering the ordinary professional skill and care of a competent engineer or architect. Provided, however, if this is a construction contract for architectural or engineering services or a contract related to the construction or repair of an improvement to real property that contains architectural or engineering services as a component part, the architectural or engineering services must be performed with the professional skill and care ordinarily provided by competent architects or engineers practicing under the same or similar circumstances and professional license. Consultant shall provide professional services necessary for the work described in Attachment "A," and incorporated herein and made a part hereof as if written word for word; provided, however, that in case of conflict in the language of Attachment "A" the terms and conditions of this Agreement shall be final and binding upon both parties hereto.

8.2 **Indemnification.**

8.3 **CONSULTANT DOES HEREBY COVENANT AND CONTRACT TO INDEMNIFY AND HOLD HARMLESS CITY AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY,**

CLAIMS, SUITS, DEMANDS OR CAUSES OF ACTION, INCLUDING REASONABLE ATTORNEY FEES OF LITIGATION AND/OR SETTLEMENT, THAT MAY ARISE BY REASON OF DEATH OF OR INJURY TO PERSONS OR DAMAGE TO OR LOSS OF USE OF PROPERTY OCCASIONED BY ANY WRONGFUL INTENTIONAL ACT OR OMISSION OF CONSULTANT AS WELL AS ANY NEGLIGENT OMISSION, ACT OR ERROR OF CONSULTANT, ITS OFFICIALS, OFFICERS, AGENTS, EMPLOYEES AND INVITEES, OR OTHER PERSONS FOR WHOM CONSULTANT IS LEGALLY LIABLE WITH REGARD TO THE PERFORMANCE OF THIS AGREEMENT, WHETHER SAID NEGLIGENCE IS SOLE NEGLIGENCE, CONTRACTUAL COMPARATIVE NEGLIGENCE, CONCURRENT NEGLIGENCE OR ANY OTHER FORM OF NEGLIGENCE. IN THE EVENT OF JOINT OR CONCURRENT NEGLIGENCE OF CONSULTANT AND CITY, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. NOTHING IN THIS PARAGRAPH IS INTENDED TO WAIVE ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW OR WAIVE ANY DEFENSES OF CONSULTANT OR CITY UNDER TEXAS LAW. THIS PARAGRAPH SHALL NOT BE CONSTRUED FOR THE BENEFIT OF ANY THIRD PARTY, NOR DOES IT CREATE OR GRANT ANY RIGHT OR CAUSE OF ACTION IN FAVOR OF ANY THIRD PARTY AGAINST CITY OR CONSULTANT.

CONSULTANT WARRANTS THAT NO MUSIC, LITERARY OR ARTISTIC WORK OR OTHER PROPERTY PROTECTED BY COPYRIGHT WILL BE REPRODUCED OR USED, NOR WILL THE NAME OF ANY ENTITY PROTECTED BY TRADEMARK BE REPRODUCED OR USED BY CONSULTANT UNLESS CONSULTANT HAS OBTAINED WRITTEN PERMISSION FROM THE COPYRIGHT OR TRADEMARK HOLDER AS REQUIRED BY LAW, SUBJECT ALSO TO CITY'S CONSENT. CONSULTANT COVENANTS TO COMPLY STRICTLY WITH ALL LAWS RESPECTING COPYRIGHTS, ROYALTIES, AND TRADEMARKS AND WARRANTS THAT IT WILL NOT INFRINGE ANY RELATED STATUTORY, COMMON LAW OR OTHER RIGHT OF ANY PERSON OR ENTITY IN PERFORMING THIS AGREEMENT. CONSULTANT WILL INDEMNIFY AND HOLD CITY AND ITS OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM ALL CLAIMS, LOSSES AND DAMAGES (INCLUDING REASONABLE ATTORNEY'S FEES) WITH RESPECT TO SUCH COPYRIGHT, ROYALTY OR TRADEMARK RIGHTS TO THE EXTENT CAUSED BY CONSULTANT OR FOR WHOM CONSULTANT IS LEGALLY LIABLE.

THE PROVISIONS OF THIS SECTION ARE INTENDED TO ONLY PROVIDE INDEMNIFICATION TO THE EXTENT ALLOWED BY TEXAS

LOCAL GOV'T CODE SEC. 271.904 AND SHALL BE CONSTRUED TO THAT EFFECT. THE CONSULTANT AS ALLOWED BY TEXAS LOCAL GOV'T CODE SEC. 271.904 WILL STILL NAME CITY AS ADDITIONAL INSURED IN ITS GENERAL LIABILITY POLICY AND PROVIDE ANY DEFENSE AS ALLOWED BY THE POLICY.

THIS SECTION SHALL SURVIVE TERMINATION OF THE AGREEMENT.

9 ASSIGNMENT AND SUBCONTRACTING.

Consultant shall not assign or subcontract any of its duties, obligations or rights under this Agreement without the prior written consent of the City. If the City grants consent to an assignment, the assignee shall execute a written agreement with the City and the Consultant under which the assignee agrees to be bound by the duties and obligations of Consultant under this Agreement. The Consultant and Assignee shall be jointly liable for all obligations under this Agreement prior to the assignment. If the City grants consent to a subcontract, the subcontractor shall execute a written agreement with the Consultant referencing this Agreement under which the subcontractor shall agree to be bound by the duties and obligations of the Consultant under this Agreement as such duties and obligations may apply. The Consultant shall provide the City with a fully executed copy of any such subcontract.

10 INSURANCE.

Consultant shall provide the City with certificate(s) of insurance documenting policies of the following minimum coverage limits that are to be in effect prior to commencement of any work pursuant to this Agreement:

10.1 Coverage and Limits

- (a) Commercial General Liability
 - \$1,000,000 Each Occurrence
 - \$1,000,000 Aggregate
- (b) Automobile Liability
 - \$1,000,000 Each accident on a combined single limit basis
 - or
 - \$250,000 Bodily injury per person
 - \$500,000 Bodily injury per person per occurrence
 - \$100,000 Property damage

Coverage shall be on any vehicle used by the Consultant, its employees, agents, representatives in the course of the providing services under this Agreement. "Any vehicle" shall be any vehicle owned, hired and non- owned.

- (c) Worker's Compensation Statutory limits Employer's liability
 - \$100,000 Each accident/occurrence
 - \$100,000 Disease - per each employee

- \$500,000 Disease - Policy limit This coverage may be written as follows:

Workers' Compensation and Employers' Liability coverage with limits consistent with statutory benefits outlined in the Texas workers' Compensation Act (Art. 8308 – 1.01 et seq. Tex. Rev. Civ. Stat.) and minimum policy limits for Employers' Liability of \$100,000 each accident/occurrence, \$500,000 bodily injury disease policy limit and \$100,000 per disease per employee

(d) Errors & Omissions (Professional Liability):

- \$1,000,000 Per Claim and Aggregate

If coverage is written on a claims-made basis, the retroactive date shall be coincident with or prior to the date to the contractual agreement. The certificate of insurance shall state that the coverage is claims-made and include the retroactive date. The insurance shall be maintained for the duration of the contractual agreement and for five (5) years following completion of the services provides under the contractual agreement or for the warranty period, which ever is longer. An annual certificate of insurance submitted to the City shall evidence coverage.

10.2 Certificates.

Certificates of Insurance evidencing that the Consultant has obtained all required insurance shall be delivered to the City prior to Consultant proceeding with any work pursuant to this Agreement. All applicable policies shall be endorsed to name the City as an additional insured thereon, as its interests may appear. The term City shall include its employees, officers, officials, agent, and volunteers in respect to the contracted services. Any failure on the part of the City to request required insurance documentation shall not constitute a waiver of the insurance requirement. The City reserves the right to make reasonable requests or revisions pertaining to the types and limits of that coverage. A minimum of thirty (30) days notice of cancellation or reduction in limits of coverage shall be provided to the City. Ten (10) days notice shall be acceptable in the event of non-payment of premium. Such terms shall be endorsed onto Consultant's insurance policies. Notice shall be sent to the Purchasing Manager, City of Burleson, 141 W. Renfro, Burleson, Texas 76028, with copies to the City Attorney at the same address.

10.3 Additional Insurance Requirements.

The insurance required herein must be provided by an insurer licensed to do business in the State of Texas. The insurance required herein must be provided by an insurer rated by the A.M. Best as "A-" or better or are rated "A" by Standard and Poor's. The insurance required herein shall be in full force and effect at all times during this Agreement.

11 COMPLIANCE WITH LAWS, ORDINANCES, RULES AND REGULATIONS.

Consultant agrees to comply with all applicable federal, state and local laws, ordinances, rules and regulations. If the City notifies Consultant of any violation of such laws, ordinances, rules or regulations, Consultant shall immediately desist from and correct the

violation.

12 NON-DISCRIMINATION COVENANT.

Consultant, for itself, its personal representatives, assigns, subcontractors and successors in interest, as part of the consideration herein, agrees that in the performance of Consultant's duties and obligations hereunder, it shall not discriminate in the treatment or employment of any individual or group of individuals on any basis prohibited by law. If any claim arises from an alleged violation of this non-discrimination covenant by Consultant, its personal representatives, assigns, subcontractors or successors in interest, Consultant agrees to assume such liability and to indemnify and defend the City and hold the City harmless from such claim.

13 NOTICES.

Notices required pursuant to the provisions of this Agreement shall be conclusively determined to have been delivered when (1) hand-delivered to the other party, its agents, employees, servants or representatives, (2) delivered by facsimile with electronic confirmation of the transmission, or (3) received by the other party by United States Mail, registered, return receipt requested, addressed as follows:

TO CITY:

City of Burleson
City Manager
Attn: Tommy Ludwig
141 W. Renfro St.
Burleson, TX 76028

TO CONSULTANT:

BIRKHOFF, HENDRICKS, & CARTER,
L.L.P.

ANDREW MATA JR., P.E.
11910 GREENVILLE AVE., STE 600
DALLAS, TX 75243

14 GOVERNMENTAL POWERS.

It is understood and agreed that by execution of this Agreement, the City does not waive or surrender any of its governmental powers.

15 NO WAIVER.

The failure of the City or Consultant to insist upon the performance of any term or provision of this Agreement or to exercise any right granted herein shall not constitute a waiver of the City's or Consultant's respective right to insist upon appropriate performance or to assert any such right on any future occasion.

16 GOVERNING LAW / VENUE.

This Agreement shall be construed in accordance with the internal laws of the State of Texas. If any action, whether real or asserted, at law or in equity, is brought on the basis of this Agreement, venue for such action shall lie in state courts located in Johnson County, Texas or the United States District Court for the Northern District of Texas.

17 SEVERABILITY.

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

18 FORCE MAJEURE.

The City and Consultant shall exercise their best efforts to meet their respective duties and obligations as set forth in this Agreement, but shall not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control (force majeure), including, but not limited to, compliance with any government law, ordinance or regulation, acts of God, acts of the public enemy, fires, strikes, lockouts, natural disasters, wars, riots, material or labor restrictions by any governmental authority, transportation problems and/or any other similar causes.

19 HEADINGS NOT CONTROLLING.

Headings and titles used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

20 REVIEW OF COUNSEL.

The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or exhibits hereto.

21 AMENDMENTS / MODIFICATIONS / EXTENSIONS.

No extension, modification or amendment of this Agreement shall be binding upon a party hereto unless such extension, modification, or amendment is set forth in a written instrument, which is executed by an authorized representative and delivered on behalf of such party.

22 ENTIRETY OF AGREEMENT.

This Agreement, including the schedule of exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the City and Consultant, their assigns and successors in interest, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement.

23 SIGNATURE AUTHORITY.

The person signing this agreement hereby warrants that he/she has the legal authority to execute this agreement on behalf of the respective party, and that such binding authority has been granted by proper order, resolution, ordinance or other authorization of the entity. The other party is fully entitled to rely on this warranty and representation in entering into this Agreement.

24 NO WAIVER OF GOVERNMENTAL IMMUNITY.

Nothing contained in this Agreement shall be construed as a waiver of City's governmental immunity, or of any damage caps or limitations imposed by law, or any other legal

protections granted to City by law, except to the extent expressly provided or necessarily implied herein.

25 MANDATORY OWNERSHIP DISCLOSURE PROVISION.

Consultant shall submit completed Texas Ethics Commission Form 1295 Ownership Disclosure form to City at time of execution of Agreement pursuant to Texas Government Code Section 2252.908.

26 MANDATORY ANTI-ISRAEL BOYCOTT PROVISION.

Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate:

- (a) Pursuant to Section 2271.002 of the Texas Government Code, Consultant certifies that either (i) it meets an exemption criterion under Section 2271.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- (b) Pursuant to SB 13, 87th Texas Legislature, Consultant certifies that either (i) it meets an exemption criterion under SB 13, 87th Texas Legislature; or (ii) it does not boycott energy companies, as defined in Section 1 of SB 13, 87th Texas Legislature, and will not boycott energy companies during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate. Pursuant to SB 19, 87th Texas Legislature, Consultant certifies that either (i) it meets an exemption criterion under SB 19, 87th Texas Legislature; or (ii) it does not discriminate against a firearm entity or firearm trade association, as defined in Section 1 of SB 19, 87th Texas Legislature, and will not discriminate against a firearm entity or firearm trade association during the term of the Agreement. Consultant acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.
- (c) Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Consultant certifies that either (i) it meets an exemption criterion under Subchapter F, Chapter 2252, Texas Government Code; or (ii) is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Vendor acknowledges this Agreement may be terminated and payment withheld if this certification is inaccurate.

27 STATUTORY TITLE VI CLAUSES

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "consultant") agrees as follows:

- 27.1 Compliance with Regulations: The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, the FHWA, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- 27.2 Non-discrimination: The Consultant, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment.

The Consultant will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

- 27.3 Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Consultant of the Consultant's obligations under this contract and the Acts and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- 27.4 Information and Reports: The Consultant will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a Consultant is in the exclusive possession of another who fails or refuses to furnish the information, the Consultant will so certify to the Recipient or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
- 27.5 Sanctions for Noncompliance: In the event of a Consultant's noncompliance with the Nondiscrimination provisions of this contract, the Recipient will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:
- (a) withholding payments to the Consultant under the contract until the Consultant complies, and/or
 - (b) cancelling, terminating, or suspending a contract, in whole or in part.
- 27.6 Incorporation of Provisions: The Consultant will include the provisions of §27.1-27.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Consultant will take action with respect to any subcontract or procurement as the Recipient or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Consultant becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Consultant may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the Consultant may request the United States to enter into the litigation to protect the interests of the United States.
- 27.7 During the performance of this contract, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "consultant") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- (a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.

- (b) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- (c) Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- (d) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- (e) The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- (f) Airport and Airway Improvement Act of 1982, (49 USC § 4 71, Section 4 7123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- (g) The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964,
- (h) The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and Consultants, whether such programs or activities are Federally funded or not);
- (i) Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.P.R. parts 37 and 38;
- (j) The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- (k) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

28 NON-EXCLUSIVITY.

Agreement is non-exclusive and City may enter into a separate Agreement with any other person or entity for some or all of the work to be performed under Agreement.

29 NO THIRD-PARTY BENEFICIARIES.

Except as expressly provided herein, nothing herein is intended to confer upon any person other than the parties hereto any rights, benefits or remedies under or because of this Agreement, provided, however, that the described beneficiaries of the indemnity provisions of this Agreement are expressly intended third-party beneficiaries of this Agreement.

30 BASIC SAFEGUARDING OF CONSULTANT INFORMATION SYSTEMS.

The Consultant shall apply basic safeguarding requirements and procedures to protect the Consultant's information systems whenever the information systems store, process, or transmit any information, not intended for public release, which is provided by or generated for the City. This requirement does not include information provided by the City to the public or simple transactional information, such as that is necessary to process payments. These requirements and procedures shall include, at a minimum, the security control requirements "reflective of actions a prudent business person would employ" which are outlined in the Federal Acquisition Regulations FAR 52.204-21(b) and codified in the Code of Federal Regulations at 48 C.F.R. § 52.204-21(b) (2016).

Consultant shall include the substance of this clause in subcontracts under this contract (including subcontracts for the acquisition of commercial items other than commercially available off-the-shelf items) in which the subcontractor may have City contract information residing in or transiting through its information system.

31 OWNERSHIP OF DOCUMENTS.

All documents and materials prepared by Consultant under the terms of this Agreement are the City's property from the time of preparation. Consultant will deliver copies of the documents and materials to the City or make them available for inspection whenever requested. City has the right to make duplicate copies of such documents or materials for its own file or use for any other such purposes as the City deems necessary and there shall be no additional costs incurred because of such copying or use.

32 COUNTERPARTS; PDF SIGNATURES.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any pdf- format or other electronic transmission of any signature of a signatory shall be deemed an original and shall bind such signatory.

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

CITY OF BURLESON:

By: _____

Name: _____

Title: _____

Date: _____

BIRKHOFF, HENDRICKS, & CARTER,
L.L.P.:

By:  _____

Name: Andrew Mata Jr., P.E.

Title: Alternate Managing Partner

Date: March 24, 2026

**EXHIBIT “A”
SCOPE OF SERVICES**

ENGINEERING SERVICES

GENERAL PROJECT DESCRIPTION:

This project will include the preparation of construction plans, technical specifications, and bidding documents for repainting the exterior of the Hulen 2.0-MG Ground Storage Reservoir No. 1 located at the Hulen Pump Station site. This work will include blasting the exterior surface, re-coating the welded steel reservoir, and making additional miscellaneous improvements.

This project will include an additive alternate bid item in the plans, specs, and bidding documents for cleaning, blasting the interior, and coating the interior of Reservoir No. 1 with NSF approved coating.

This project will also include an additive alternate bid item in the plans, specs, and bidding documents for repainting the exterior only of the Hulen 3.0-MG Ground Storage Reservoir No. 2 located at the Hulen Pump Station site. The work will include the power washing of the exterior surface and re-coating the concrete reservoir. This reservoir will continue to remain in service during the exterior repainting.

1. DESIGN PHASE

Preliminary Design

- A. Make site visit to the Hulen Ground Storage Reservoir No. 1 and No. 2 site to identify current conditions.
- B. Prepare preliminary plan sheet of the pump station and ground storage reservoir site and necessary details for the following:
 1. Base Bid Repainting the exterior of Reservoir No. 1.
 2. Additive Alternate bid item for Repainting the interior of Reservoir No. 1.
 3. Additive Alternate bid item for Repainting the exterior of Reservoir No. 2.
- C. Prepare location map.
- D. Prepare photograph sheets of the existing site.

**City of Burleson and Birkhoff, Hendricks & Carter, LLP
Hulen Ground Storage Reservoir No. 1 Exterior Repaint**

- E. Prepare preliminary Technical Specifications for the repainting of Reservoir No. 1 and No. 2. Include for the abatement and disposal of the red lead primer if found from heavy metal testing. Include containment specification for exterior of Reservoir.
- F. Prepare preliminary bidding documents.
- G. Include in the specifications the following:
 - 1. Replacement of ladders, new ladders to meet current OSHA requirements.
 - 2. Remove ladder cages to meet current OSHA requirements. Include pre-engineered ladder gates.
 - 3. Install fall protection systems to common system throughout (similar to Industrial GSR system).
 - 4. Remove non-functional level target and corroded interior pulley bracket.
 - 5. Extend Splash pad and add 45 degree bend for flap valve. Replace dislodged rock rip rap with concrete grouted rock rip rap.
 - 6. Add electrical grounding.
 - 7. Add combination vent/access port at current vent location if needed.
 - 8. Add additional handrail on roof at ladder locations.
 - 9. Include remedial welding for faults located after blasting is completed.
 - 10. Add sample port.
 - 11. Add Kasco tank mixer.
 - 12. Add new logo as required by the City.
 - 13. Add confined space labeling.
 - 14. Additive alternate bid item for Reservoir No. 1 interior cleaning, interior blasting, and interior coating.
 - 15. Additive alternate bid item for Reservoir No. 2 exterior cleaning and coating.
- H. Submit electronic copy in .PDF format of the preliminary plans to the City for review. Submit requirements for sealed competitive proposals.
- I. Meet with the City to discuss preliminary plans, special conditions and sealed competitive proposal requirements.

**City of Burleson and Birkhoff, Hendricks & Carter, LLP
Hulen Ground Storage Reservoir No. 1 Exterior Repaint**

Final Design

Prepare final design construction plans upon approval of preliminary plans by City, Engineer shall prepare final plans at a horizontal scale of 1" = 40' and a vertical scale of 1" = 5'. Final plans shall contain all information and requirements of the preliminary plans and shall incorporate comments from City and utility companies. Engineer shall also prepare contract documents, specifications, and special provisions. In addition, the following shall be submitted:

- a. All Preliminary Construction Plan requirements
- b. Standard City title page with location map and revision block in the lower right corner showing date of revision, description of revision and initials of the engineer authorizing the revision.
- c. Bid documents including proposal forms, special provisions, specifications, contract documents, and permit applications.
- d. Applicable details and construction standards for all elements of the project.
- e. An opinion of probable cost based on the items and quantities listed in the proposal in the contract documents. This estimate shall be based on current unit prices bid on similar projects.

SEALED COMPETITIVE PROPOSALS (Bid Phase) AND CONSTRUCTION

2. BIDDING PHASE

- A. Assist City in the advertisement of Project for sealed competitive proposals, including creating a bidders list, reproduce copies of the final approved plans and contract documents **for distribution, providing potential bidders with plans and contract documents, advertise** projects on BidSync.
- B. Assist City in the opening and tabulation of bids, reviewing bidders references, past work history, financial resources, physical resources to produce the project on schedule and preparing a letter report on recommendations to the City for award of the construction contract. Meet with City Selection Committee and assist in the review process. Engineer shall provide a summary of submitted data in spreadsheet form to the committee.

City of Burleson and Birkhoff, Hendricks & Carter, LLP
Hulen Ground Storage Reservoir No. 1 Exterior Repaint

3. CONSTRUCTION ADMINISTRATION PHASE

- A. Attend Pre-Construction Conference with City staff, Contractor and Quality Control Inspector, including preparing agenda.
- B. Review and approve shop drawings, samples and other data which contractor(s) are required to submit.
- C. Evaluate and determine the acceptability of substitute materials and equipment proposed by contractor(s).
- D. Interpret drawings and specifications for City and Contractor during construction.
- E. Furnish five (5) half size sets of construction ready plans, specifications, and contract documents to the City and Contractor, including an electronic copy in .PDF format.
- F. Make one visit every other month to the site for observation, inspection and interpretation of plans and specifications as requested by the City period of time specified for construction in the project manual. A total of three (3) site visits by the Engineer is anticipated during the construction phase.
- G. Review of change orders and shop drawings shall be included in basic design fee. Preparation of change orders and associated plans, specifications or other revisions if due to improper design, plan preparation, specifications, quantities, materials or other fault of the Engineer shall be prepared by the Engineer and included in the basic Design fee.
- H. Revise the construction record drawings in accordance with the information furnished by construction Contractor(s) reflecting changes in the project made during construction.
- I. Conduct in company with City, a final review of the Project for conformance with the design concept of the Project and general compliance with the Construction Contract Documents. Prepare a list of deficiencies to be corrected by the contractor before recommendation of final payment.

TERMS AND CONDITIONS FOR ELECTRONIC FILE TRANSFERS

Electronic files are transmitted on the terms and conditions below:

By opening, accessing, copying, or otherwise using the transmitted electronic files, these terms and conditions are accepted by the user.

- A. The electronic files are compatible with the following software packages operating on a PC using Windows operating systems:
 - Autocad Civil 3D 2022 , Civil 3D 2017

**City of Burleson and Birkhoff, Hendricks & Carter, LLP
Hulen Ground Storage Reservoir No. 1 Exterior Repaint**

- Innovyze InfoWater Pro 3.0 with ESRI Arc Pro 2.7
 - Innovyze InfoSewer Pro 7.6 with ESRI Arc Map 10.5
 - ESRI 10.4
 - MS Office 365
 - Bluebeam Revu (PDF) Ver 10 - Ver 2020
- B. Birkhoff, Hendricks & Carter, L.L.P. does not make any warranty as to the compatibility of these files beyond the specified release of the above stated software.
- C. Because data stored on electronic media can deteriorate undetected or be modified, Birkhoff, Hendricks & Carter, L.L.P. will not be held liable for completeness or correctness of electronic media.
- D. The electronic files are instruments of our service. Where there is a conflict between the hard copy drawings and the electronic files, Birkhoff, Hendricks & Carter, L.L.P.'s hard copy file will govern in all cases.
- E. Electronic files may only be modified in accordance with the Texas Engineering Practice Act for modifying another Engineer's design.

EXCLUSIONS

The intent of this scope of services is to include only the services specifically listed herein and no others. Services specifically excluded from this contract scope include, but are not necessarily limited to the following:

- A. Certification that work is completed by Contractor in accordance with plans and specifications.
- B. Contractor means and methods.
- C. Environmental impact statements, assessments, and cleanup.
- D. Fees for permits or advertising.
- E. Fees for publicly advertising the project.
- F. Certification that work is in accordance with plans and specifications.
- G. Environmental cleanup.
- H. Quality control and testing services during construction.
- I. Phasing of Contractors work.
- J. On-site safety precautions, programs and responsibility.

City of Burleson and Birkhoff, Hendricks & Carter, LLP
Hulen Ground Storage Reservoir No. 1 Exterior Repaint

- K. Revisions and/or changes after completion of original design, unless to correct errors in the plans.
- L. Title searches, boundary surveys, or property surveys.
- M. Preparation of bidding documents.
- N. Structural analysis.
- O. Fiduciary responsibility to the Client.

4. SPECIAL SERVICES

- A. Design Survey. Complete field survey for design that includes topography of pump station and ground storage reservoir site for site plan preparation. Take photographs of existing site for use during design.
- B. Heavy Metals Testing. Take samples of existing paint and complete heavy metal testing for information to the City and prepare a heavy metals test report.
- C. Quality Control Inspection. Include the services of Henley Johnston & Associates to provide a NACE Coating Inspector for QA/QC services during construction on an on-call basis. The services consist of the following:
 - 1. Welded Steel Reservoir No. 1 Exterior Repainting will include a budget for 20 trips for the NACE Coating inspection/testing, and 12 trips for the structural steel welding inspection/testing.

Paint and steel inspections will occur at stop points of construction. Typically, when remedial welding has been completed. It is anticipated inspection of wall plates to support raters and center vent replacement with inspection/vent port. Inspection of the blast will occur after a morning of blast and prior to prime coat. Contractor will blast to around noon then clean for inspection. Once complete, the prime coat will be applied, followed by topcoats. Mil thickness will be completed along with holiday testing.

It will be determined with the city, at the time of construction, who will notify the inspectors (contractor or city inspector) and how active the inspections will be.

- D. TCEQ Permitting. Prepare and submitted the required form, transmittal letters, plans and technical specification to the Texas Commission on Environmental Quality (TCEQ) to their review and approval of the interior repainting of the Ground Storage Reservoir No. 1 (Additive Alternate bid item).
- E. Record Drawings. Utilizing City on-site representative and Contractor construction record information, consultant will prepare record drawings and provide an electronic copy in .PDF format.

City of Burleson and Birkhoff, Hendricks & Carter, LLP
Hulen Ground Storage Reservoir No. 1 Exterior Repaint

- F. Miscellaneous. Miscellaneous items such as printing and mileage. Printing of hard copy plan set for preliminary and final reviews by City. Print hard copy of documents for use during construction. Mileage will be charged at the established IRS rate.

5. ADDITIONAL QUALITY CONTROL INSPECTIONS

Additional Quality Control inspection services from Henley Johnston & Associates may be added after the construction bid process to provide a NACE Coating Inspector for QA/QC services during construction on an on-call basis. The additional inspection services consist of the following:

1. Welded Steel Reservoir No. 1 Interior Repainting (Additive Alternate) will include a budget for 20 trips for the NACE Coating inspection/testing, and 6 trips for the structural steel welding inspection/testing.
2. Concrete Reservoir No. 2 Exterior Repainting (Additive Alternate) will include a budget for 18 trips for the NACE Coating inspection/testing.

Paint and steel inspections will occur at stop points of construction. Typically, when remedial welding has been completed. It is anticipated inspection of wall plates to support raters and center vent replacement with inspection/vent port. Inspection of the blast will occur after a morning of blast and prior to prime coat. Contractor will blast to around noon then clean for inspection. Once complete, the prime coat will be applied, followed by topcoats. Mil thickness will be completed along with holiday testing.

It will be determined with the city, at the time of construction, who will notify the inspectors (contractor or city inspector) and how active the inspections will be.

City of Burleson and Birkhoff, Hendricks & Carter, LLP
Hulen Ground Storage Reservoir No. 1 Exterior Repaint

EXHIBIT "B"

Fee Schedule

Compensation for **Exhibit A – Scope of Services** , Task Items 1 through 5 shall be on the following table.

<u>Task</u>		<u>Fee Amount</u>
<u>ENGINEERING SERVICES</u>		
Compensation for Engineering Services described under Tasks 1-3 shall be based on a Lump Sum Basis in the following amounts		
1	Design Phase	\$ 47,700.00
2	Bidding Phase	\$ 3,800.00
3	Construction Administration Phase	\$ 20,900.00
Engineering Services Subtotal:		\$72,400.00
Compensation for Special Services under Tasks 4, shall be on an hourly basis of salary cost times a multiplier of 2.45 for time expended on the task. Field survey crew shall be based on \$195.00 per hour, inclusive of all equipment rentals and software licensing; plus, mileage charge at the IRS established rate. Expenses shall be at invoice cost times a multiplier of 1.15.		
4	<u>SPECIAL SERVICES</u>	
A	Design Survey	\$2,400.00
B	Heavy Metals Testing	\$3,500.00
C	Quality Control Inspection	
	1. Quality Control Inspection GSR No. 1 Exterior Painting	\$26,000.00
D	TCEQ Permitting	\$2,500.00
E	Record Drawings	\$2,000.00
F	Miscellaneous	\$1,500.00
Additional Services Subtotal:		\$37,900.00
Total Not To Exceed Amount:		\$110,300.00
5	<u>ADDITIONAL QUALITY CONTROL INSPECTIONS</u>	
	1. Quality Control Inspection GSR No. 1 Interior Painting (Add. Alternate No. 1)*	\$21,000.00
	2. Quality Control Inspection GSR No. 2 Exterior Painting (Add. Alternate No. 2)*	\$13,000.00
Total Additional Quality Control Inspection		\$34,000.00

*To be added if Add. Alternate No. 1 or Add. Alternate No. 2 are accepted at time of construction

On this basis, the Task 1 through Task 4 Fees and Expenses shall not exceed \$110,300.00 without written authorization by the City of Burleson. Task 5.1 and/or Task 5.2 may be added after construction bid.